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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,229	09/29/2003	Takako Fujii	B-5248 621294-8	9863
36716	7590	06/30/2006	EXAMINER	
LADAS & PARRY 5670 WILSHIRE BOULEVARD, SUITE 2100 LOS ANGELES, CA 90036-5679			HILL, LAURA C	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10-675-229

EXAMINER
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ART UNIT	PAPER
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20060620

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

## Office Action Summary

Application No.

10/675,229

Applicant(s)

FUJII ET AL.

Examiner

Laura C. Hill

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-7 and 9-17 under Fitzgerald (US 4,435,178) have been considered but are moot in view of the new ground(s) of rejection as discussed below. It is noted that Applicant's arguments with respect to Fitzgerald and Cole (EP 0613671) (see Remarks pages 8-10) are based on the amendments submitted 25 April 2006 of 'wherein said lower layer extends beyond an outer edge of said upper layer' as recited on lines 8-10 of independent claim 1. It is also noted that Fitzgerald discloses sheet of water impervious material 26 which overlies back member 24 (column 3, lines 9-11) and is laid on top of the core (column 4, lines 4-6) and is thus equivalent to the claimed fluid impermeable back member.

### ***Claim Language Interpretation***

2. The scope of independent claim 1 as amended has been changed from 'wherein a squeeze out portion is formed in said lower layer of absorbent by squeezing out at least two side portions of said lower layer from end portions' to 'wherein said lower layer extends beyond an outer edge of said upper layer' as recited in lines 8-10. The newly added limitation is interpreted to mean the lower layer of the absorbent has a width or length that extends in at least one direction beyond an outer edge where the upper layer ends. Thus the lower layer is interpreted to be wider and/or longer in dimension than the upper layer of the absorbent on at least one side.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6-7 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Young et al. (US 5,188,624; herein 'Young'). Regarding claims 1, 6 and 9-10 Young discloses a disposable diaper 10 with an absorbent sandwiched between a liquid pervious top sheet 12 and liquid impervious back sheet 18 (column 4, lines 61-67), wherein the absorbent includes insert pad/upper layer 14 and liquid dispersion pad/lower layer 16 disposed between the permeable top sheet 12 and impermeable back sheet 18 (column 4, lines 61-67 and figure 2); wherein the lower layer 16 has a higher density of 0.05-0.15 g/cm<sup>3</sup> (column 7, lines 24-26, lines 36-38 and lines 58-63) than the upper layer 14 density of 0.05-0.30 g/cm<sup>3</sup> for a comfortable product (column 5, lines 59-66); wherein the lower layer extends beyond an outer edge of the upper layer and the portion of the upper layer 14 overlies less than the full area of the lower layer 16 (column 9, lines 59-61 and figures 1-2); and wherein the remaining portion of the lower layer 16 that extends beyond an outer edge of the upper layer 14 inherently has a density greater than the upper layer 14 density. The discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose not render the old composition patentably new to the discoverer. *Atlas Powder Co. v. Ireco Inc.*, 190F.3d 1342, 1347,

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51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not expressly disclose not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

Regarding claim 7 Young discloses no clearance formed by indented recesses.

4. Claims 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hirt et al. (US 5,454,800; herein 'Hirt'). Hirt discloses body fluid absorbent article 10, 10' (column 2, lines 64-65) comprising: an absorbent 16,26 positioned between liquid permeable cover/surface member 12, 22 and liquid impermeable baffle/back member 14,24 (column 3, lines 10-12 and column 10, lines 7-9), wherein the absorbent 16 includes transfer layer/upper layer 28 having gaps 34 for a fluid pathway (column 10, lines 35-52) and first member/lower layer 30 (column 10, lines 29-36) disposed between surface member 12 and back member 14 (figures 2 and 4); wherein the lower layer 30 has a greater wicking capability and tissue density than the upper layer 28 (column 4, lines 64-65, column 9, lines 58-65); and wherein the lower layer 30 extends beyond the outer edge of the upper layer 28 (figure 4); wherein the portion of lower layer 30 that extends beyond the outer edge of upper layer 28 inherently has a density.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 2-5 and 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al. (US 5,188,624; herein 'Young') in view of Fitzgerald (US 4,435,178;

herein 'Fitzgerald'). Regarding claims 2-4, 11 and 17 Young *does not expressly disclose* the layers have different densities due to indented embossed recesses formed in the body side face or garment side face of the lower layer 16. **Fitzgerald** discloses absorbent sanitary napkin 10 having an absorbent core 12 disposed between body fluid permeable body-side top sheet 34 (column 3, lines 14-18) and sheet of water impervious material 26 which overlies back member 24 (column 3, lines 9-11) and is laid on top of the core (column 4, lines 4-6); wherein the absorbent core has a upper layer 14 coextensive with lower layer 16 and having recesses 18 formed on the body-facing side to accommodate gushes of fluid and improve absorption of bodily fluids (column 3, lines 24-28 and figure 1), compressed grooves/recesses 19 formed on the garment-facing side (column 2, lines 40-68, figure 1), wherein squeeze-out portions are formed on both sides of lower layer 16 in areas outside of recesses 18 (figure 1), wherein the lower layer 16 inherently has a higher density than upper layer 14 and a higher density than the squeeze out portions lying outside recesses since the lower layer contains recesses 18, 19. Fitzgerald further discloses the recesses and compressed portions are desirable to easily receive and prevent the gushes of waste fluid from gushing through the pad, and thus enhancing body fluid distribution (column 2, lines 11-16). One would be motivated to modify the lower layer of Young with the recessed embossments on the respective body side and garment side for improved absorption of bodily fluids since the references are in the same field of endeavor; body fluid absorbing articles with multi-layered absorbent cores. Therefore, it would be

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obvious to one of ordinary skill in the art at the time the invention was made to modify the lower layer and thus provide indented embossed recesses on the lower layer.

Regarding claim 5 see the discussion above with respect to claim 7.

Regarding claims 12 and 14-16 Fitzgerald further discloses indented recesses 18, 19 formed in a linear net shape with an angle of less than 45 degrees or formed in diagonal grooves 25 having an angle of greater than 90 degrees (column 2, line 66-column 3, line 4 and figure 7).

Regarding claims 13 Young/Fitzgerald *do not expressly disclose* embossing percentage values. Embossing percentage is a result-effective variables since the number of embossments and surface area affect how fluid flows through the article (column 2, lines 61-63) and depends on the density of the layer. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Young/Fitzgerald with the values claimed for enhanced article performance, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mizutani (US 6,296,628) is cited for showing sanitary napkin 1 with absorbent core 5 disposed between top sheet 3 and back sheet 4, said absorbent core 5 having a lower layer 2 that extends beyond an outer edge of upper layer 10 but the upper layer has liquid pervious apertures 14.



Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

